



**MINUTES OF THE REGULAR MEETING OF THE  
CITY OF HAYWARD PLANNING COMMISSION  
Council Chambers  
Thursday, December 16, 2004, 7:30 p.m.  
777 B Street, Hayward, CA 94541**

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**MEETING**

The regular meeting of the Hayward Planning Commission was called to order at 7:30 p.m., by Chair Sacks followed by the Pledge of Allegiance.

**ROLL CALL**

Present: COMMISSIONERS: Lavelle, McKillop, Bogue, Thnay, Peixoto, Zermeño  
CHAIRPERSON: Sacks  
Absent: COMMISSIONER: None

Staff Members Present: Anderly, Lt. Bird, Conneely, Koonze, Patenaude, Pearson, Macias

General Public Present: Approximately 6

**PUBLIC COMMENTS**

There were no public comments.

**PUBLIC HEARINGS**

1. Use Permit Application No. PL-2004-0578 – Jack-In-The-Box (Anthony Poligono Operator/Applicant) – Foodmaker Inc. (Owner) – Request to Amend Use Permit 80-109 to Expand Operation of Drive-Through to 24 Hours/Daily – The Project is Located at 1075 Tennyson Road Approximately 150 Feet East of Tampa Avenue

Staff report submitted by Assistant Planner Koonze, dated December 16, 2004, was filed.

Commissioner Zermeño recused himself from participation in the hearing as his business is located across the street from this property.

Assistant Planner Koonze presented the staff report. He reported that since the report was distributed, a discussion had taken place with the applicant and Lt. Bird of the Police Department and it had been agreed that the hours for security as listed in Condition 30 would be modified to have a security guard posted between the hours of 7:00 p.m. and 3:00 a.m., during the hours in which problems tend to occur. The change in hours was agreed upon by the Planning Division, Police Department, and the applicant. He responded to questions from Commissioners.

Commissioner Bogue stated that Condition 30 should also indicate that the Police Chief may change the hours at his discretion as necessary.

In response to Commissioner Lavelle's inquiry regarding loitering in this area, Lt. Bird stated that during the last year there were 12 calls after midnight related to the property.

Chair Sacks opened the public hearing at 7:44 p.m.

Virginia Fanelli representing the applicant operator of this Jack in the Box noted that the back part of the parking lot is permanently fenced off and the rest of the lot is closed at 9:00 p.m. She mentioned she has no objection to the conditions of approval as amended.

Chair Sacks closed the public hearing at 7:45 p.m.

Commissioner McKillop moved, seconded by Commissioner Thnay, to accept that the proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) Guidelines, Section 15305 Minor Alterations in Land Use Limitations; and approve the request to continue 24-hour operation of the drive-through window subject to the findings and conditions of approval.

Commissioner Bogue offered a friendly amendment to include the wording related to Condition 30 that the Police Chief could modify the hours of the security guard as deemed necessary.

Commissioners McKillop and Thnay agreed to the amendment.

The motion passed with six ayes (Commissioner Zermeño recused).

The Commissioners commended Ms. Fanelli for the good maintenance and cleanliness of the business.

2. Use Permit Application No. PL-2004-0581 – Martin Oviedo (Applicant) / Lily Woo (Owner) – Request to Add a Full Bar to a Restaurant (Buon Appetito) in the Central City-Commercial (CC-C) Zoning District – The Project is Located at 917 A Street

Staff report submitted by Associate Planner Pearson, dated December 16, 2004, was filed.

Commissioner McKillop recused herself from participation in the hearing due to business reasons.

Associate Planner Pearson presented the staff report. He responded to questions from Commissioners.

Commissioner Zermeño requested clarification regarding the occupancy limits as on the first page of the staff report indicates 76 seats, however Condition 34 indicates 71.

Commissioner Peixoto asked about ADA requirements and to what extent this project would be required to comply to make it more accessible. He further inquired regarding the area in back that is cluttered and if the steps would be removed. Associate Planner Pearson noted that since the front entrance is not changing, the project is not subject to ADA requirements at this time. The debris would be cleared, but the steps belong to Zorn's, which presently has an application in review and the items pertaining to that would be dealt with during that process.

Chair Sacks noted that COMMPRE's conditions had been addressed, except number 5 regarding the use of any amplifying systems. Associate Planner Pearson noted that for this use permit, it was not applicable. If at some point in the future the applicant desired to become a nightclub, the use permit would have to be modified.



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Chair Sacks opened the public hearing at 7:59 p.m.

Martin Oviedo, head chef and owner of the restaurant, stated that this application was submitted to accommodate his customers who have requested the additional service of alcoholic beverages. He further noted that there has been an increase in clients and the present space is too small. He has lost customers who do not wish to wait. There might be an opportunity in the future for outdoor seating, but it is not being considered at present. He noted that the table arrangement takes into consideration the drafty area by the door, and there are no tables next to the door.

Liz Morales, representing COMMPRE, asked that Condition 13 be modified to ABC requirements that quarterly sales of alcoholic beverages shall not exceed the gross sales of food during the same period, and that separate records be maintained for both on a quarterly basis.

Discussion ensued about the modification and the enforcement of ABC requirements. Principal Planner Patenaude stated that staff had no objection to the inclusion of the wording if the Commission wanted to include it in the condition.

Chair Sacks closed the public hearing at 8:09 p.m.

Commissioner Zermeno indicated that he liked the restaurant but was not sure if the changes to Condition 13 were necessary.

Commissioner Zermeno moved, seconded by Commissioner Bogue, to accept the proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Sections 15332, *In-Fill Development Projects*; approve the Use Permit, subject to the findings and conditions presented in the report; and find that the use is necessary for the public convenience and necessity with respect to the sale of alcoholic beverages.

Commission Bogue expressed appreciation for reviewing a plan for expansion of a good existing business. He further noted that he felt the conditions were sufficient. He commented that the number of seats is grouped by tables and it is easy to have all the tables filled while all of the seats are not completely occupied.

Chair Sacks inquired about consistency of the conditions. Principal Planner Patenaude indicated that staff would clarify the occupancy information with the Fire Department.

Commissioner Thnay indicated he would support the motion. The restaurant is high quality and the expansion reflected that more people were coming downtown.

Commissioner Lavelle noted that she had enjoyed eating at the restaurant and the expansion is a sign of good health of the downtown area and felt that offering other spirits beyond beer and wine was acceptable. However, she offered a friendly amendment to include the COMMPRE request to keep separate quarterly records of sales of food and alcoholic beverages.

Discussion ensued regarding review and control of the records. It was noted that ABC would remain in control of the licensing requirements, but the modification to the condition would make the language consistent.

Commissioner Zermeño indicated he would accept the friendly amendment, but Commissioner Bogue stated he would not. Commissioner Bogue did not think that a violation of the use permit should be on the basis of any one quarter, as considered by the ABC.

Commissioner Zermeño withdrew acceptance of the friendly amendment.

Commissioner Lavelle withdrew her request for the friendly amendment.

Commissioner Peixoto indicated that it would be better to not add the wording of another agency if not needed as it might set a precedent for future similar applications.

The motion passed with 6 ayes (Commissioner McKillop recused).

3. Use Permit No. PL-2004-0410 and Variance No. PL-2004-0671 – Kathy Brady for KFC – Rancatore (Applicant) / Harman Development Incorporated (Owner) - Request to Modify Use Permit/Variance 86-62 and Remodel the KFC Restaurant Including a Variance to Allow a Trellis in a Front Yard – The Project is Located at 1299 W. Tennyson Road, at the Corner of Patrick Avenue

Staff report submitted by Associate Planner Pearson, dated December 16, 2004, was filed.

Associate Planner Pearson presented the staff report. He responded to questions from Commissioners.

Commissioner Bogue expressed concern regarding the column of the trellis within the 7 foot setback which might be too close to the curb. He suggested that the setback be 10 foot to avoid the possibility of a driver clipping the column.

Principal Planner Patenaude indicated that the radius was generous but he would check with the Engineering staff to ensure it was adequate.

Chair Sacks opened the public hearing at 8:35 p.m.

Kathy Brady, representing the management for this facility, agreed with commissioners regarding the trellis as a nice accent to the building. She mentioned that there would be an application in the future for sign changes. She also confirmed that the 2 trash bins would be enclosed and covered.

Commissioner Zermeño noted that the telephone pole at the rear of the property was leaning toward the property.

The commissioners expressed support of the changes that have been made and those proposed to the property.



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Chair Sacks closed the public hearing at 8:40 p.m.

Commissioner Thnay moved, seconded by Commissioner Zermeño, and unanimously passed, to accept that the proposed project is Categorically exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15302 *Replacement or Reconstruction*, and Section 15305 *Minor Alterations in Land Use Limitations*; approve the modification of the use permit, subject to the attached findings and conditions; and approve the setback variance, subject to the attached findings and conditions, with the setback of the trellis to be permitted at 7 feet if present setback is insufficient.

4. Revocation of Administrative Use Permit No PL-2004-0343 – Initiated by the Planning Director – Mathew Zahari (Owner) – The Project is Located at 24850 Mission Boulevard (Continued to January, 13, 2005)

**ADDITIONAL MATTERS**

5. Oral Reports on Planning and Zoning Matters

There were no reports.

6. Commissioners' Announcements, Referrals

Commissioner Zermeño wished everyone, "Feliz Navidad."

Commissioner Thnay suggested a visit to the GIS system on the City's website and Keyhole.com where one can view properties in 3D.

Commissioner McKillop invited all to participate in the parade this Saturday to commemorate the 45<sup>th</sup> Anniversary of Cal State Hayward and in support of retaining the present name of the university.

Commissioner Zermeño asked if it would be possible to pass a motion related to the name of the University. Assistant City Attorney indicated that it would not be appropriate as it was not on the agenda and therefore no action could be taken.

**APPROVAL OF MINUTES**

Minutes of December 2, 2004 – Approved.

**ADJOURNMENT**

The meeting was adjourned by Chair Sacks at 8:45 p.m.

**APPROVED:**

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Julie McKillop, Secretary  
Planning Commission

**ATTEST:**

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Connie G. Macias  
Deputy City Clerk